<u>REMARKS</u>

I.   <u>Status</u>

The Office Action indicates claims 1-68 to be pending in this Application.

Claims 1-10, 13-26, 29, 31-44, 47-60, 63, and 65-68 are rejected under 35 U.S.C.

102(e) as being anticipated by Bommareddy (U.S. Patent No. 6,779,039).

Claims 11, 12, 30, 45, 46, and 64 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Bommareddy in view of Schuetze (U.S. Patent Application Publication No.

2003/0110181).

Claims 27, 28, 61, and 62 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Bommareddy in view of Garcia-Luna-Aceves (U.S. Patent Application

Publication No. 2002/0129086).

Claims 1, 15, 24, 35, 49, and 58 are independent.

II.   <u>Double Patenting</u>

Applicants, noting that the Office Action states that:

> "Applicant states in the Argument that claims 15-34 and 49-
> 68 are provisionally rejected under 35 U.S.C. 101 as
> claiming the same invention as that of claims 15-34 and 49-
> 68 copending Application No. 10/674679. The Application
> No. 10/674679 was abandoned on 2/4/2008; applicant needs
> to update the status"
> (see Office Action p. 2),

respectfully indicate their understanding that the provisional double patenting rejection has been

withdrawn.

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III.   <u>Rejection of Independent Claims 1, 15, 24, 35, 49, and 58 under 35 U.S.C. 102</u>

The Office Action rejects claims 1, 15, 24, 35, 49, and 58 under 35 U.S.C. 102(e) as being anticipated by Bommareddy.

However, Applicants respectfully submit that Bommareddy fails, for example, to disclose, teach, or suggest:

> "... receiving, at the first node from one or more second
> nodes that are members of one or more second clusters in
> said network environment, one or more <u>traffic measurements</u>
> <u>performed</u> by the one or more second nodes with respect to
> the one or more second clusters ..."

as set forth in each of claims 1 and 35 (emphasis added).

The Office Action contends that such is taught among column 3 lines 53-56 and Fig. 1 of Bommareddy. More specifically the Office Action, viewing these portions of Bommareddy as discussing Database Server Cluster 120 or Application Server Cluster 122 sending outbound traffic to Router1 114, contends that such outbound traffic is teaching of one or more traffic measurements.

However, Applicants respectfully observe that Bommareddy fails, for instance, to disclose, teach, or suggest such outbound traffic to be <u>performed measurements</u>, and instead discusses such outbound traffic to be traffic, such as voice and streaming audio/video, destined for client devices 126 on the Internet 128:

> "[o]utgoing traffic from the Database Server Cluster 120 and
> the Application Server Cluster 122 that is <u>destined for client</u>
> <u>devices 126 on the Internet 128</u> is distributed among the two
> or more routers, Router1 114 and Router2 115"
> (see Bommareddy col. 5 ln. 59-62; emphasis added)
>
> "[a] clustering system operates on all types of Internet
> protocol (all/IP) technologies and can be used to create a
> cluster of any Internet Servers, no matter what protocol is
> running on IP, even <u>Voice</u> over Internet protocol (VoIp) and

> streaming <u>audio/video</u> via User Datagram Protocol
> (UDP/IP)"
> (see Bommareddy col. 4 ln. 25-30; emphasis added).

As another example, Bommareddy fails to disclose, teach, or suggest:

> "... determining <u>if</u> the affiliation change <u>would</u> result in an
> integer-squared number of nodes being affiliated with said
> environment ..."

as set forth in each of claims 15 and 49 (emphasis added).

The Office Action, apparently equating the detection of failure of Bommareddy with the "determining" of the claims, equating the failure of Bommareddy with the "affiliation change" of the claims, viewing Bommareddy as indicating that "once the interface and link have a failure, it is integer-squared number of nodes since they show in pairs," and equating such showing in pairs with the "integer-squared number of nodes being affiliated with said environment" of the claims, contends that such is taught among column 3 lines 22-26 of Bommareddy.

However, Applicants respectfully submit that even if, for the sake of argument, Bommareddy is taken to so indicate and such equations are taken to be valid, mere discussion of detecting a failure for which nodes show in pairs would not at all be disclosure, teaching, or suggestion, for instance, of determining <u>if</u> a particular failure <u>would</u> result in nodes showing in pairs.

As an additional example, Bommareddy fails to disclose, teach, or suggest:

> "... selecting from identification numbers associated with
> nodes in said network environment an identification number
> <u>closest in value</u>, in view of a specified <u>polarity</u>, to an
> identification number associated with said node ..."

as set forth in each of claims 24 and 58 (emphasis added).

The Office Action contends that such is taught among column 3 line 17 and column 4 line 15 of Bommareddy.

However, Applicants respectfully submit that these portions of Bommareddy fail, for instance, to disclose, teach, or suggest any consideration of closeness in value or polarity and instead merely discuss:

> "[f]or communication interconnects using a router clustering system, servers need not be configured with multiple gateways. Servers are configured to use a single 'logical' gateway having an IP address identifying the router cluster"
> (see Bommareddy col. 3 ln. 14-17)

> "[e]ach router has an equal probability of assignment for an outbound flow forwarding since the traffic distributor uses only information in the packet IP header to select between routers"
> (see Bommareddy col. 4 ln. 13-16).

In view of at least the foregoing, Applicants respectfully submit that claims 1, 15, 24, 35, 49, and 58, as well as those claims that depend therefrom, are in condition for allowance.

IV.   Dependent Claim Rejections

Applicants do not believe it is necessary at this time to further address the rejections of the dependent claims as Applicants believe that the foregoing places the independent claims in condition for allowance. Applicants, however, reserve the right to further address those rejections in the future should such a response be deemed necessary and appropriate.

(Continued on next page)

CONCLUSION

Applicants respectfully submit that this Application is in condition for allowance for which action is earnestly solicited.

If a telephone conference would facilitate prosecution of this Application in any way, the Examiner is invited to contact the undersigned at the number provided.
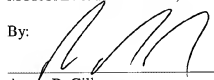
AUTHORIZATION

The Commissioner is hereby authorized to charge any fees which may be required for this response, or credit any overpayment to Deposit Account No. 13-4500, Order No. 4208-4152US1.

Furthermore, in the event that an extension of time is required, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to the above-noted Deposit Account and Order No.

Respectfully submitted,

MORGAN & FINNEGAN, L.L.P.

Dated: <u>October 22, 2008</u>

By: _____

Mailing Address:
MORGAN & FINNEGAN, L.L.P.
3 World Financial Center
New York, New York 10281-2101
(212) 415-8700
(212) 415-8701 (Fax)

Angus R. Gill
Registration No. 51,133

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